



# National Guard Bureau Office of Legislative Liaison



## FY12 National Defense Authorization Act

*Analysis of H.R. 1540, the National Defense Authorization Act for  
Fiscal Year 2012.*

*As of 14 December 2011*

### ***Bills Status***

	Passed in Committee	Passed in Chamber	Agreement	Final Passage	Signed into Law
House (H.R. 1540)	<input checked="" type="checkbox"/> 11 May 2011	<input checked="" type="checkbox"/> 26 May 2011	<input checked="" type="checkbox"/> 12 Dec 2011	<input checked="" type="checkbox"/> 14 Dec 2011	
Senate (H.R. 1540)	<input checked="" type="checkbox"/> 15 Nov 2011	<input checked="" type="checkbox"/> 1 Dec 2011			

<http://www.ng.mil/ll>

## Table of Contents

EXECUTIVE SUMMARY .....	- 1 -
ARMY NATIONAL GUARD.....	- 2 -
AIR NATIONAL GUARD .....	- 2 -
APPROPRIATIONS.....	- 3 -
OPERATIONS AND MAINTENANCE .....	- 3 -
MILITARY PERSONNEL POLICY .....	- 3 -
COMPENSATION AND OTHER PERSONNEL BENEFITS .....	- 5 -
HEALTH CARE .....	- 5 -
GENERAL PROVISIONS .....	- 5 -
MATTERS RELATED TO FOREIGN NATIONS .....	- 6 -
OTHER AUTHORIZATIONS .....	- 6 -
NATIONAL GUARD EMPOWERMENT .....	- 6 -
ADDITIONAL BUDGET ITEMS.....	- 7 -
MILITARY CONSTRUCTION AUTHORIZATIONS .....	- 7 -
CONFERENCE REPORT ITEMS OF SPECIAL INTEREST.....	- 7 -
HOUSE REPORT 112-78 ITEMS OF SPECIAL INTEREST .....	- 8 -
SENATE REPORT 112-26 ITEMS OF SPECIAL INTEREST .....	- 12 -

## Executive Summary

This guide provides only a short summary and analysis of the many National Guard-related provisions. To obtain a complete understanding of any particular provision, users are encouraged to review the actual legislative language contained in the applicable section of the bills, accompanying reports, or public law. The bill is available on the NGB-LL web page at [HTTP://WWW.NG.MIL/LL/](http://www.ng.mil/LL/)

On 14 December, the House approved final passage of the conference report for the FY12 National Defense Authorization Act. The conference report reconciles differences between the bills previously passed by the Senate on 1 December and the House on 26 May. The bill includes provisions that demonstrate continued Congressional support for the transformation of the National Guard to an operational force, including placing the Chief, National Guard Bureau on the Joint Chiefs of Staff and re-establishing the Vice Chief, National Guard Bureau position at the three-star level.

The bill includes several important provisions related to the National Guard.

- **Vice Chief, National Guard Bureau:** The bill would re-establish the position of the Vice Chief, National Guard Bureau at the three-star level. The bill would also require that both the Chief and Vice Chief, National Guard Bureau be designated by the Secretary of Defense as general officers to be counted against the pool of general and flag officers in joint duty assignments established by section 526(b) of title 10, United States Code.
- **Chief of the National Guard Bureau:** The bill would place the Chief of the National Guard Bureau on the Joint Chiefs of Staff with the specific responsibility of addressing matters involving non-federalized National Guard forces in support of homeland and civil support missions.
- **C-23 Aircraft Retirement:** The bill would limit the retirement of C-23 aircraft until the Army first offers the aircraft to the state in which the aircraft is based. The bill also requires that the Secretary of the Air Force, in consultation with the Secretary of the Army, the Chief, National Guard Bureau, each supported commander of a combatant command, and the Administrator of FEMA, conduct a study to determine the number of fixed-wing and rotary-wing aircraft required to support the following title 10 and 32 missions at low, medium, moderate, high, and very-high levels of operational risk:
  - Homeland defense
  - Time sensitive, direct support to forces consisting of the regular component of the Army and the National Guard
  - Disaster response
  - Humanitarian assistance

The bill also requires the Comptroller General of the US conduct a sufficiency review of the study.

- **State Partnership Program:** The bill authorizes up to \$3,000,000 of the funds made available to the National Guard State Partnership Program to pay travel and per diem costs associated with the participation of US and foreign civilian and non-defense agency personnel in authorized State Partnership Program events conducted both in the US and in foreign partner countries. The bill also requires a report on program, to include a summary of source of funds for SPP over the past 5 years, analysis of types and frequency of activities performed, description of objectives of SPP, description of how DoD selects country partnerships, and how program effectiveness is measured.
- **Authority to Order Selected Reserve to Active Duty:** The bill would modify section 12304 of Title 10 to allow the Service Secretaries to order members of the Reserve Component to active duty other than during times of war or national emergency for a period of not more than 365 days. The bill requires manpower and associated costs to be included and identified in defense budget materials, requires a description of the mission, states not more than 60,000 members may be on active duty under this authority at any one time.
- **Modification of Yellow Ribbon Program:** The bill would make enhancements to the Yellow Ribbon Program to improve process and determine best practices.
- **NGREA:** The bill would authorize a total of \$225 million in funding for the National Guard and Reserve Equipment Account.\*

It is important to note that the actual effect of some provisions of the NDAA will be greatly affected by the outcomes of the Fiscal Year 2012 Defense Appropriations bill and the Fiscal Year 2012 Military Construction Appropriations bill.

## Army National Guard

### Authorization of Funding

(All Dollars in Thousands)

Army National Guard	President's FY12 Budget Request	House Approved	Delta from PB	Senate Passed	Delta from PB	Conference Report	FY12 Delta from PB
O&M*	\$7,041,432	\$7,122,152	+\$80,720	\$6,840,432	-\$201,000	\$6,924,932	-\$116,500
OCO O&M*	\$387,544	\$387,544	\$0	\$387,544	\$0	\$377,544	-\$10,000
MILCON*	\$773,592	\$823,592	+\$50,000	\$773,592	\$0	\$773,592	\$0

### Army National Guard End Strength

Army National Guard	President's FY12 Budget Request	House Approved	Delta from PB	Senate Passed	Delta from PB	Conference Report	FY12 Delta from PB
End Strength	358,200	358,200	0	358,200	0	358,200	0
AGR	32,060	32,060	0	32,060	0	32,060	0
Dual Status Technicians	27,210	27,210	0	27,210	0	27,210	0
Non-Dual Status Technicians	1,600	1,600	0	1,600	0	1,600	0
ADOS	17,000	17,000	0	17,000	0	17,000	0

## Air National Guard

### Authorization of Funding

(All Dollars in Thousands)

Air National Guard	President's FY12 Budget Request	House Approved	Delta from PB	Senate Passed	Delta from PB	Conference Report	FY12 Delta from PB
O&M*	\$6,136,280	\$6,233,380	+\$97,100	\$6,102,780	-\$33,500	\$6,098,780	-\$37,500
OCO O&M*	\$34,050	\$34,050	\$0	\$34,050	\$0	\$34,050	\$0
MILCON*	\$116,246	\$133,525	+\$17,279	\$116,246	\$0	\$116,246	\$0

### Air National Guard End Strength

Air National Guard	President's FY12 Budget Request	House Approved	Delta from PB	Senate Passed	Delta from PB	Conference Report	FY12 Delta from PB
End Strength	106,700	106,700	0	106,700	0	106,700	0
AGR	14,833	14,833	0	14,833	0	14,833	0
Dual Status Technicians	22,509	22,509	0	22,509	0	22,509	0
Non-Dual Status Technicians	350	350	0	350	0	350	0
ADOS	16,000	16,000	0	16,000	0	16,000	0

## Appropriations

**Reduction of Strategic Airlift Requirement:** The bill would reduce the number of strategic airlift airframes that must be maintained by the Air Force from 316 to 301 (Sec. 131)

**C-23 Aircraft Retirement:** The bill would limit the retirement of C-23 aircraft until the Army first offers the aircraft to the state in which the aircraft is based. The bill deletes the authority for the National Guard crews in State status to operate the aircraft. The bill also requires that the Secretary of the Air Force, in consultation with the Secretary of the Army, the Chief, National Guard Bureau, each supported commander of a combatant command, and the Administrator of FEMA, conduct a study to determine the number of fixed-wing and rotary-wing aircraft required to support the following title 10 and 32 USC missions at low, medium, moderate, high, and very-high levels of operational risk:

- Homeland defense
- Time sensitive, direct support to forces consisting of the regular component of the Army and the National Guard
- Disaster response
- Humanitarian assistance

The bill also requires the Comptroller General of the US conduct a sufficiency review of the study (Sec. 112).

**JSTARS Re-Engining:** The bill would require the Air Force to conduct an audit on the funds appropriated to re-engine E-8 JSTARS aircraft. The bill changes the requirement to install one engine ship set to be installed on one operation JSTARS aircraft (Sec. 146).

## Operations and Maintenance

**Sikes Act Amendments:** The bill would amend the Sikes Act to include State-owned National Guard Installations (Sec. 312).

**Definition of Depot-Level Maintenance:** The bill further defines depot-level maintenance and repair (Sec. 321).

**Eligibility for Space-A Travel:** The bill would require a Comptroller General study on the Department's space-available travel program, including a review of the cost and capacity of the system and a discussion of logistical and management issues. The review would also assess the effect on the cost and capacity of the program if the program were extended to un-remarried widows of active and reserve component members, and expanded for gray area retirees to include overseas travel (Sec. 362).

## Military Personnel Policy

**Vice Chief, National Guard Bureau:** The bill would re-establish the position of the Vice Chief, National Guard Bureau at the three-star level. The bill would also require that both the Chief and Vice Chief, National Guard Bureau be designated by the Secretary of Defense as general officers to be counted against the pool of general and flag officers in joint duty assignments established by section 526(b) of Title 10 (Sec. 511).

**Chief National Guard Bureau as Member of Joint Chiefs of Staff:** The bill would place the Chief of the National Guard Bureau on the Joint Chiefs of Staff with the specific responsibility of addressing matters involving non-federalized National Guard forces in support of homeland and civil support missions (Sec. 512).

**Modification of Time in Which Preseparation Counseling Must be Provided for Reserve Component Members Being Demobilized:** The bill would remove the requirement that demobilizing Reserve Component members be provided pre-separation counseling 90 days prior to separation/demobilization. The provision would allow the Secretaries Concerned to provide pre-separation counseling as soon as possible when the 90 day requirement is unfeasible. The conferees stated they believe the existing authority includes members of the RC who have an

anticipated separation date and does not need to be further modified. The committee recommends that the SECDEF clarify in policy the availability of pre-separation counseling to members of the RC (Sec. 513).

**Clarification of Applicability of Authority for Deferral of Mandatory Separation of Military Technicians (Dual Status) Until Age 60:** The bill would clarify Department of Defense submission and processing policy requirements for military technicians (dual status) that request military retention beyond a mandatory removal date or a maximum years of service requirement (Sec. 514).

**Reserve Component Response to Domestic Emergency:** The bill would allow the Secretary of Defense to activate Army Reserve, Navy Reserve, Marine Corps Reserve and Air Force Reserve service members in response to a major disaster or emergency, for not more than 120 days upon request from a governor (Sec. 515).

**Authority to Order Selected Reserve to Active Duty:** The bill would modify section 12304 of Title 10 to allow the Service Secretaries to order members of the Reserve Component to active duty other than during times of war or national emergency for a period of not more than 365 days. The bill requires manpower and associated costs to be included and identified in defense budget materials, requires a description of the mission, states not more than 60,000 members may be on AD under this authority at any one time (Sec. 516).

**Eligibility for Promotion for Reserve Officers Employed As Dual Status Technicians:** The bill would remove from promotion eligibility those Reserve officers of the Army and Air Force employed as dual status military technicians who had been retained on the Reserve Active status list beyond the mandatory removal date normally required after reaching their maximum number of years of service (Sec. 517).

**Consideration of Reserve Component Officers for Appointment to Certain Command Positions:** The bill requires that whenever officers of the Armed Forces are considered for appointment to the position of Commander, Army North Command or Commander, Air Force North Command, fully qualified officers of the National Guard and Reserves shall be considered for appointment to such position (Sec. 518).

**Report on Terminating Military Technicians:** The bill would require the Secretary of Defense to submit a report of the feasibility and advisability of terminating the military technician as a distinct personnel management category, and would also require that Dual-Status Military Technicians' input is included in the report (Sec. 519).

**Dwell Time Measurement and Data Collection:** The House bill would require the Secretary of Defense to develop a policy for dwell time as well as a system to track operational tempo for units and individuals (Sec. 522).

**Reserve Component Mental Health Student Stipend:** The bill would expand an existing stipend program to include post-baccalaureate degrees and training leading to certification as a licensed mental health provider in Clinical Psychology or Social Work. The bill also requires recipients of the stipend under this authority to agree to serve in the Selected Reserve (Sec. 556).

**Revision To Membership of Department of Defense Military Family Readiness Council:** The bill would add a representative from the Army or Air National Guard, and two spouses or parents of a RC member to the Council. The bill would allow the Secretary of Defense more flexibility in soliciting members to represent each of the Services, as well as ensure achieving balanced viewpoints. Additionally, this proposal would authorize terms for membership on the MFRC to be reduced to two years, rather than three, which would allow greater rotation among the members for broader viewpoints, as well as increases the willingness of potential members to commit to the responsibility of serving on the MFRC (Sec. 574).

**Modification of Yellow Ribbon Program:** The bill would make enhancements to the Yellow Ribbon Program to improve process and determine best practices (Sec. 590).

### **Report on BAH for Members Transitioning Between Active Duty and Full-Time National Guard**

**Duty:** The bill would require the Secretary of Defense to study the implications on BAH for members of the National Guard when they transition between full-time National Guard duty under title 32 and active duty under title 10, taking into account current laws, policies, and practices, and the well-being of service members and their families (Sec. 661).

## **Compensation and Other Personnel Benefits**

**One-year Extension of Certain Expiring Bonus and Special Pay Authorities:** The bill would provide authority to pay bonuses and special payments for one year: The Selected Reserve affiliation bonus and the prior service enlistment bonus, special pay for enlisted members assigned to high priority units, Selected Reserve reenlistment bonus, Ready Reserve enlistment and reenlistment bonus, recruitment and retention incentive programs for Reserve component health care professionals, and health professions loan repayment program (Sec. 611).

**One Year Extension of Inactive Duty Training Pay:** The bill would extend for one year reimbursement travel expenses for inactive duty training outside of the normal commuting distance (Sec. 621).

**Clarifying Death Gratuity During Inactive Duty Training:** The bill would clarify eligibility for death gratuity and related benefits for reserves that die during an authorized stay at their residence during or between successive days of inactive duty training. The bill would not make this authority retroactive, but the conferees do recommend the Secretary of the Army use an appropriate authority to equitably resolve cases where death occurred before the date of enactment (Sec. 651).

**Report on Incentives for Health Care Professionals in the Reserve Components:** The bill would require the Surgeon Generals of the Army, Air Force, and Navy to submit a report on the staffing needs for health care professionals (Sec. 662).

## **Health Care**

**Behavior Health Support for Members of the Reserve Component:** The bill allows the Secretary of Defense to provide access to mental health assessments to members of the Reserve Components during scheduled unit training and assemblies. In addition, members of the RC participating in annual training or individual duty training shall have access to behavioral health support programs, which include one or any combination of:

- Access to license mental health providers in armories, reserve centers, or other places for unit training assemblies;
- Programs providing training on suicide prevention and post-suicide response;
- Psychological health programs;
- Other programs as the Secretary of Defense, in consultation with state Surgeons General of the National Guard, state Directors of Psychological Health, state Departments of Mental Health, or the Director of Psychological Health Program of the National Guard Bureau (Sec. 703).

**Transitional Health Benefits for the Reserve Component:** The bill would clarify that when members of the Reserve Components on active duty are extended on active duty, the 180-day period of Transition Assistance Management Program begins when the member is separated from active duty (Sec. 706).

## **General Provisions**

**Extension of Authority of Certain Counter Drug Activities of the Department of Defense:** The bill extends for three-years the authority of the Department of Defense to provide support for the counter drug activities of other governmental agencies (Sec. 1005).

**Change of Deadline for National Guard and Reserve Equipment Report:** The bill would push back the deadline for the annual National Guard and Reserve Equipment Report from February 15 to March 15 (Sec. 1070).

**Report on Integration of Unmanned Aerial Systems in National Air Space:** The bill would require a report from the Secretary of Defense in conjunction with the Director of the FAA and the UAS Executive Committee on integration and possible pilot programs (Sec. 1074).

**State Partnership Program:** The bill authorizes up to \$3,000,000 of the funds made available to the National Guard State Partnership Program to pay travel and per diem costs associated with the participation of US and foreign civilian and non-defense agency personnel in authorized State Partnership Program events conducted both in the US and in foreign partner countries (Sec. 1085).

**Reemployment Rights for Title 32 NG Duty:** The bill would provide USERRA protection to National Guardsmen who have been called to Title 32 Duty (non-training) (Sec. 575).

## **Matters Related to Foreign Nations**

**Report on the State Partnership Program:** The bill would require a Comptroller General report on the National Guard State Partnership Program, to include a summary of source of funds for SPP over the past 5 years, analysis of types and frequency of activities performed, description of objectives of SPP, description of how DoD selects country partnerships, and how program effectiveness is measured (Sec. 1234).

## **Other Authorizations**

**Drug Interdiction and Counter Drug:** The bill authorizes \$1,153,330,000\* for drug interdiction and counter drug activities of the Department of Defense (Sec. 1404).

## **National Guard Empowerment**

**Vice Chief, National Guard Bureau:** The bill would both re-establish the position of the Vice Chief, National Guard Bureau at the three-star level. The bill would also require that both the Chief and Vice Chief, National Guard Bureau be designated by the Secretary of Defense as general officers to be counted against the pool of general and flag officers in joint duty assignments established by section 526(b) of Title 10 (Sec. 511).

**Chief of the National Guard Bureau:** The bill would place the Chief of the National Guard Bureau on the Joint Chiefs of Staff with the specific responsibility of addressing matters involving non-federalized National Guard forces in support of homeland and civil support missions (Sec. 512).

**Report on Comparative Cost of RC / AC:** The bill requires a report on the comparative costs of the Reserve Component and Active Component and the advisability of increasing the number of RC units (Sec. 1080A).

**Display of Procurement of Equipment for RC in FYDP:** The bill requires the Future Year Defense Plans to indicate what equipment is scheduled to be purchased for the Reserve Component (Sec. 1606).

**Army North and Air Force North Commanders:** The bill would require that whenever officers of the Armed Forces are considered for appointment to the position of Commander, Army North Command or Commander, Air Force North Command, fully qualified officers of the National Guard and Reserves shall be considered for appointment to such position (Sec. 518).

**State Partnership Program:** The bill authorizes up to \$3,000,000 of the funds made available to the National Guard State Partnership Program to pay travel and per diem costs associated with the participation of US and foreign civilian and non-defense agency personnel in authorized State Partnership Program events conducted both in the US and in foreign partner countries (Sec. 1085).



## **Additional Budget Items**

**National Guard and Reserve Equipment Account:** The bill authorizes \$225,000,000 for the National Guard and Reserve Equipment Account (Sec. 4102).\*

## **Military Construction Authorizations**

**Army National Guard Construction and Acquisition Projects:** The bill authorizes military construction and land acquisition projects across 30 states and territories for the Army National Guard (Sec. 4601).

**Air National Guard Construction and Acquisition Projects:** The bill authorizes military construction and land acquisition projects across six states for the Air National Guard (Sec. 4601).

## **Conference Report Items of Special Interest**

### **Transfer of Air Force C-12 Liberty Intelligence, Surveillance, and Reconnaissance Aircraft to the Army**

The Senate amendment contained a provision (sec. 156) that would require the Secretary of Defense to develop and implement a plan for the orderly transfer of the Air Force MC-12 Liberty intelligence, surveillance, and reconnaissance (ISR) aircraft to the Army.

The House bill contained no similar provision.  
The Senate recedes.

The Senate based this position on the view that: (1) the Department of Defense (DOD) does not need two fleets of C-12-based ISR aircraft equipped with full-motion video and tactical signals intelligence sensors supporting ground forces (the MC-12 Liberty in the Air Force and the Enhanced Medium Altitude Reconnaissance and Surveillance System (EMARSS) in the Army); (2) the Army is more likely than the Air Force to maintain a commitment to this type of platform and mission; (3) the Army has an existing and available pool of C-12 pilots and infrastructure; and (4) the Air Force has a shortage of pilots for its rapidly growing unmanned aerial vehicle fleet.

The DOD leadership, including the Deputy Secretary of Defense, the Vice Chairman of the Joint Chiefs of Staff, the Under Secretary of Defense for Intelligence (USD(I)), and the Secretaries of the Air Force and Army, informed the conferees that they all believe that the Air Force should continue to operate and manage the MC-12 Liberty fleet and assured the conferees that the Air Force is committed to the mission.

The conferees accept DOD's judgment, but note that other actions within the Department send mixed signals about the conclusions these officials have reached. The conferees understand that the Air Force has already proposed to transfer the Liberty aircraft to the Air National Guard, despite assurances to the conferees from the USD(I) that this would not be allowed to happen. The conferees have concerns about the ability of the Air National Guard to sustain the levels of forward deployment and operational tempo required to meet the needs of Army, Marine Corps, and special forces ground units. The conferees are not opposed to having the Air National Guard contribute to this mission by operating at least a portion of these assets as the demand for high levels of forward deployment recedes. However, that level of participation should be consistent with meeting the demands of the combatant commanders, when considering the strains in operating tempo that would be placed on the Air National Guard force. The conferees urge the Department, in making any decision on transfers of this mission and aircraft to the Guard, to consider requirements for aircraft of this type to assist in border control and counternarcotics operations.

The conferees expect that the decision to keep the Liberty aircraft in the Air Force as a theater-level asset would be reflected in a commitment by the combatant commanders to follow established allocation procedures through the Joint Forces Air Component Commander process in supporting deployed joint forces, obviating the need for a second fleet of EMARSS aircraft in the Army.

## **Definition of Depot-Level Maintenance and Repair**

The conferees note that the study on the future capability of the Department of Defense maintenance depots directed by section 322 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417) found that the existing statutory definition was ambiguous and subject to interpretation. The conferees are concerned that these ambiguities are directly affecting the development of core depot maintenance capabilities and allocation of sustaining workloads. To resolve these ambiguities, the conferees specifically addressed in the provision the depot-level maintenance of software and the installation of modifications or upgrades. The conferees have removed exceptions from the definition and have addressed that issue more appropriately in the core depot-maintenance capability provision provided for elsewhere in this Act.

## **House Report 112-78 Items of Special Interest**

### **Air filters for National Guard helicopters**

The committee notes that Inlet Barrier Filtration (IBF) and Auxiliary Power Unit (APU) filtration systems capture 99 percent of air particles, including grit and other abrasives that degrade and destroy the internal components of rotorcraft engines. The substantial cost savings in engine repair, overhaul, class 9 replacement parts, and maintenance labor have been well documented throughout the Army and Army National Guard (ARNG). The committee believes that installing IBF and APU filtration systems on these aircraft could reduce maintenance costs and increase readiness rates. The committee encourages the ARNG to fund IBF and APU filtration systems in the future.

### **UH-72A Lakota helicopter aircraft survivability equipment**

The budget request contained \$250.4 million for procurement of 39 UH-72A Lakota helicopters.

The committee remains supportive of the UH-72A helicopter program. The committee notes that with over 150 aircraft now delivered to the Army on cost and within schedule, the UH-72A has proven to be a robust and efficient multirole platform. The committee understands that the UH-72A has a documented requirement for 210 helicopters to support domestic missions in “permissive” environments. The committee believes that there may be opportunities to leverage this aircraft to meet additional operational needs for the warfighter. However, before this happens, the committee needs to understand how the Army defines “permissive” versus “non-permissive” environments. In addition the committee needs to understand what the associated survivability modifications would be required and if such modifications would be feasible, given size, weight, and power limitations, if the mission envelope of the UH-72A was expanded beyond “permissive” environments.

The committee recommends \$250.4 million, the full amount requested, for procurement of 39 UH-72A Lakota helicopters.

### **Abrams tank program National Guard modernization**

The budget request contained \$181.3 million for the Abrams tank upgrade program.

The committee notes that the National Guard currently has six Heavy Brigade Combat Teams (HBCT) that consist of the Abrams M1A1 tank which is an analog based system and active duty HBCTs operate the more modern M1A2 tank which uses a digital system. The committee also notes that there are significant differences in capability, particularly for growth and survivability between the M1A1 and M1A2 SEP (version 2) that now is being produced under the current Multi-Year Procurement contract. The committee understands that under the original Future Combat Systems (FCS) strategy, the Army planned to cascade the M1A2 tanks to the National Guard. However, as a result of the termination of the FCS program, the Army has yet to develop a plan to modernize the National Guard HBCT in the near term. Given the Army's top development project is currently the tactical “network,” which requires a digital capability, the committee believes the National Guard needs the M1A2 tank in order to stay aligned with the Army's tactical network strategy.

The committee further notes that the Army must maintain the ability for its Heavy Brigade Combat Teams to overmatch any possible threat in the future. The committee is concerned that even with the funds requested for fiscal year 2012, the Abrams tank production would shut down in fiscal year 2013, and the Army is unsure that the production line and supporting industrial base would be available when it starts future upgrades to Abrams tanks in fiscal year 2016. The committee believes that the Army must rapidly accelerate future Abrams tank upgrades, or it must continue production of the most capable version of the M1 Abrams until the upgrade program begins. The committee believes that the most prudent course of action is to bridge the planned production gap with production of the most capable version of the M1 tank, the M1A2 system enhancement program version 2 (M1A2 SEPv2), at the most economical rate possible. The committee also believes that the cost of shutting down and then restarting the Abrams production line would be significant and may cost as much as it would to "pure fleet" the National Guard with the most modern version of Abrams tanks.

The committee recommends \$453.3 million, an increase of \$272.0 million, for the Abrams tank upgrade program to procure additional M1A2 SEPv2 tanks using the current multi-year contract, with the additional tanks being used to replace less capable versions of the M1 tank in the Army National Guard or prepositioned equipment sets.

#### **Information management system for the National Guard**

The committee believes that the National Guard Bureau Weapons of Mass Destruction Civil Support Teams (WMD CST) play an important role in support to civil authorities at a domestic Chemical, Biological, Radiological, Nuclear, and High Explosive (CBRNE) incident site. The committee is aware that a tactical information management system has been fielded to the CST's to provide crucial command, control, and communications capabilities. The committee is also aware that in the event of such an incident, National Guard assets such as the CBRNE Enhanced Response Force Package and Homeland Defense Response Force units could deploy to support the CST's. Therefore, to ensure connectivity and unity of effort of all deployed National Guard assets, the committee encourages the National Guard Bureau to expand the CST information management system to these follow-on forces.

#### **Flight Simulator Training Hour Restoration**

As part of the Department of Defense's efficiencies initiative, the budget request cut the Army Guard and Air Force Active and Reserve Components flying hours program for training with the intent that simulators would be used to backfill the training requirements.

The committee recommends restoring the reduction to the flying hours program for the training of the Army Guard and Air Force Reserve Components. The committee is concerned that the reduction was levied on the Reserve Components without considering their lack of access to the high-fidelity, networked simulators that are resident in the active Army and Air Force.

#### **Wounded Warrior Implementation**

Section 511 of the National Defense Authorization Act of 2008 (Public Law 110-181) provided the authority enabling military technicians (dual status) to continue to be employed as technicians when the loss of their military membership in the Selected Reserve is the result of a combat-related disability. The National Guard Bureau issued implementing instruction in June 2009 to the state-level National Guard Headquarters. Unfortunately, the implementation guidance may not have been distributed to all pertinent levels of personnel and dual-status technicians may not have been informed of this program. Therefore, the committee directs the National Guard Bureau to reissue the implementing instructions to the state and territory headquarters with additional guidance to ensure the information is disseminated to the lowest level possible.

#### **State Partnership Program**

The committee continues to believe that the National Guard's State Partnership Program (SPP) is an important part of the larger Department of Defense (DOD) effort to build the capacity of our foreign partners in a wide variety of security related activities. The committee notes, however, that the

Department of Defense has yet to issue regulations regarding the use of Department funds to pay the costs associated with SPP, as required by section 1210 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84). The committee understands that the Department of Defense is preparing to issue a Directive Type Memorandum (DTM) on SPP and encourages it to complete that process as soon as possible.

In the meantime, the committee is aware that pending the release of the DTM and DOD regulations, some National Guard units have taken a conservative view of the scope of authorized SPP activities, and have curtailed their engagement with partner countries accordingly. The committee commends this approach, but does not want SPP activities unnecessarily limited and therefore encourages the National Guard to proactively consult the Office of the General Counsel of the Department of Defense if clarification regarding certain engagement programs is required.

#### **Intra-theater and inter-theater airlift programs**

The budget request contained \$396.8 million for C-17 modernization, \$1.1 billion for the C -5 Reliability Enhancement and Re-engineering program, \$141.3 million for procurement of 1 C -130H/J aircraft, \$1.1 billion for procurement of 10 HC/MC/AC-130 aircraft, and \$571.6 million for 9 C-27J aircraft.

The committee notes in regards to inter-theater airlift aircraft programs, the Secretary of the Air Force requested to repeal section 8062(g) of title 10, United States Code, which provides that the Secretary of the Air Force maintain a minimum inventory of 316 strategic inter theater airlift aircraft. The committee does not support repeal and believes that a minimum inventory of 316 airlift aircraft provides a prudent balance of operational risk, affordability and sufficient organic capabilities in meeting the ever-increasing mobility requirements in support of the National Military Strategy and combat operations. The committee's rationale stems from concerns regarding the future viability of the Civil Reserve Airlift Fleet, the reliance of transporting oversize and outsize cargo using foreign aircraft leasing arrangements, the unforeseen over-utilization rates of the current fleet of inter-theater airlift aircraft, the consistent under-estimation of deploying units Time-Phased Force and Deployment Data regarding the amount of equipment to support combat operations, and the Mobility Capability and Requirements Study does not address or characterize the operational risk in meeting combatant commander warfighting requirements or timelines.

The committee notes in regards to intra-theater airlift aircraft programs, that the Department of Defense continues to struggle with sufficiently, and comprehensively, analyzing and defining intra-theater airlift mobility requirements for active and reserve components, as well as National Guard units supporting both title 10 and title 32, United States Code, airlift mobility operations. The committee continues to believe that a reduction in the C-130H/J inventory from 395 to 335 aircraft, a reduction in the inventory of C-27J aircraft from 78 to 38, and a wholesale inventory reduction by the Army of 42 C-23 aircraft is unjustified, premature and based on insufficient analytics, and moreover, executed for budgetary reasons. Furthermore, the committee understands that neither the 2006 Mobility Capability Study or the 2010 Mobility Capability and Requirements Study did not comprehensively analyze all aspects of intra-theater airlift requirements in the mission areas of time sensitive-direct support, homeland security, Air Force and Army National Guard domestic airlift operations in support of contingencies resulting from natural disasters, humanitarian crises, emergencies, and combatant commander warfighting requirements. Unless the Department has analysis that indicates the original requirement for 78 C-27J aircraft is no longer valid, the committee supports the procurement of 9 C-27J aircraft in fiscal year 2012 and the acquisition of C 27Js in fiscal year 2013 and beyond to meet the requirements of the National Guard. Without a comprehensive analysis of the aforementioned mission areas, it is impossible to justify such a decrease in intra-theater airlift capabilities.

In the committee report (H. Rept. 110-652) accompanying the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, the committee expressed concerns regarding the C -27J program. On April 29, 2011, the Secretary of the Air Force notified the committee that the program unit cost of the aircraft had grown from the April 2008 program baseline by \$8.7 million per aircraft and the estimated operations and sustainment costs of the aircraft had grown by \$1.5 billion, resulting in a significant Nunn-McCurdy breach. An aircraft quantity decrease of 78 to 38 total

aircraft and an immature sustainment plan from the original program of record were primary contributing factors to the Nunn-McCurdy breach.

Elsewhere in this title, the committee includes a provision that would prohibit the Secretary of the Army from retiring C-23 aircraft until one year after the Director of the National Guard, in consultation with the Chief of Staff of the Army, the Chief of Staff of the Air Force, Commander, U.S. Northern Command, Commander, U.S. Pacific Command, and the Administrator of the Federal Emergency Management Agency submits an intra-theater airlift study to the congressional defense committees that incorporates a comprehensive review of intra-theater airlift requirements for both title 10, United States Code, and title 32, United States Code operations. Lastly, if the intra theater airlift requirements of the study are not sufficiently supported by the currently planned intra-theater airlift force structure of the Department of Defense, the committee encourages the Department to procure the most cost-effective and mission-effective airlift aircraft to meet requirements.

### **National Guard and Reserve Component Equipment Fund**

The budget request for Overseas Contingency Operations contained \$280.0 million for National Guard and Reserve equipment.

The committee notes the specific amount of resources, including equipment, needed to achieve the National Guard and Reserve Component's new operational reserve status remains a challenge, given the dual mission responsibility of the National Guard and Reserve Components, in particular the National Guard. The committee understands that despite recent increases in equipment funding levels that equipment shortfalls still exist for the National Guard and Reserve Components. The committee believes additional funds would help eliminate identified shortfalls in the areas of critical dual-use equipment. The committee expects these funds to be used for the purposes of, but not limited to the procurement of: aircraft, missiles, wheeled and tracked combat vehicles, tactical wheeled vehicles, ammunition, small arms, tactical radios, non-system training devices, logistics automation systems, remote weapon stations, chemical/biological protective shelters, and other critical dual-use procurement items for the National Guard and Reserve Components. The committee understands the National Guard is also in the process of upgrading central pedestal displays for their F-16 block 30 aircraft and recommends the National Guard examine the viability of utilizing a similar upgrade program for F-16 block 40 and 50 aircraft.

The committee recommends \$505 million, an increase of \$225 million for National Guard and Reserve equipment within the Overseas Contingency Operations budget request. Elsewhere in title 1 of this Act, the committee recommends \$4.8 billion, an increase of \$100.0 million, for National Guard and Reserve equipment.

### **Explanation of Funding Adjustment**

The committee recommends a reduction of funding for a project contained in the budget request for military construction and family housing. This reduction includes:

- (1) \$12,721,000 for TFI – F-22 Combat Aircraft Parking Apron at Joint Base Pearl Harbor-Hickam, Hawaii.

The budget request included \$12,721,000 and would construct an aircraft parking apron for twenty F-22 Aircraft.

The committee supports the requirements associated with this project but notes that other projects authorized for appropriation in the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383) will have a cascading impact on the timely construction of this project. The committee supports the authorization for appropriations in an amount equivalent to the ability of the military department to execute in the year of the authorization for appropriations. For this project, the committee believes that the Department of Defense has exceeded its ability to fully expend the funding in fiscal year 2012. Accordingly, the committee recommends \$0, a reduction of \$12,721,000, to support this project.

## Senate Report 112-26 Items of Special Interest

### Army National Guard Technicians

The committee recommends maintaining Army National Guard non-dual status technician end strength at 1,600, consistent with prior years. The committee notes that under a Presidential waiver of end strength limitations, the Army National Guard currently employs over 3,000 non-dual status technicians, many of whom serve at State headquarters rather than supporting operational units. Further, in section 513 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383), Congress provided temporary hiring authority for non-dual status technicians necessary to replace deployed dual status technicians. This provision should alleviate short-term shortages caused by deploying technicians. The committee considers the end strength limitations of this section sufficient to meet permanent peacetime requirements. The committee urges the Department to meet any additional long-term civilian personnel needs through existing civilian personnel hiring processes, rather than through the non-dual status technician program.

### C-27J

The budget request included \$571.6 million in Aircraft Procurement, Air Force, to buy nine C-27J aircraft. This purchase would complete the current program of record with a total of 38 aircraft. When there were separate C-27J programs within the Army and Air Force, the Army had established the requirement for filling the direct support role as 78 aircraft, based on an analysis of alternatives. Subsequently, the Air Force decided that a total program of 38 C-27Js would be sufficient to meet their responsibility for providing direct support mission capability for the Army. The Air Force based this conclusion on: (1) an analysis of the Army's demand for direct support mission support; (2) a Mobility Capability Requirements Study conclusion that the programmed Air Force fleet of 401 C-130 aircraft exceeded maximum demand for intratheater airlift in any wartime scenario by 66 C-130 aircraft; and (3) an analysis that showed that a supply of 38 C-27J aircraft, along with 20 C-130 aircraft diverted from an intra-theater airlift mission to the Army direct support mission, would meet the Army's needs.

The Defense Department (DOD) also has requirements for supporting domestic missions, such as those from the Department of Homeland Security. Absent other information, it would appear to the committee that the Department merely assumes that it can muster the appropriate support for domestic missions from within those forces that are derived from war fighting requirements. Just as it has turned out that the current conflicts in Afghanistan and Iraq were not exactly the "lesser included contingencies" that previous defense planning had assumed, it is altogether possible that the same would be true for meeting whatever domestic demands may be placed on the Department.

The set of circumstances raises several questions: (1) since the cost per flying hour should be much less expensive for a C-27J aircraft, should the Air Force buy more C-27Js specifically for meeting the Army direct support mission, rather than recapitalizing C-130 inventory that may be excess to intra-theater airlift requirements?; and (2) is there an appropriate structure and processes in place for estimating requirements for DOD domestic support and translating those requirements into DOD programs, to the extent that the requirements may not be satisfied within existing DOD forces?

The committee directs the Secretary of the Air Force to conduct a cost/benefit analysis of buying more C-27Js than the current 38- aircraft program specifically for meeting the Army direct support mission, rather than recapitalizing C-130 inventory that may be excess to intra-theater airlift requirements.

The committee also directs the Under Secretary of Defense for Policy to provide a report on the appropriate structure and processes in place that DOD should have for estimating requirements for DOD domestic support and translating those requirements into DOD programs, to the extent that the requirements may not be satisfied within existing DOD forces.

The committee directs the Department to provide both of the reports no later than the submission of the fiscal year 2013 budget request.

### **Strategic airlift aircraft force structure**

The Department of Defense (DOD) authorization request included provisions that would: (1) strike subsection (g) of section 8062 of title 10, United States Code; and (2) change the certification requirement in section 137 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84).

Subsection (g) of section 8062 requires the Secretary of the Air Force to maintain a strategic airlift aircraft inventory of 316 aircraft.

Section 137 prevents the Secretary of the Air Force from retiring a C-5 aircraft until the Secretary certifies that the retirement of such aircraft will not increase the operational risk of meeting the National Defense Strategy and that the retirement of such aircraft will not reduce the total strategic airlift force structure below 316 strategic airlift aircraft.

The committee has not included the requested provisions because of concerns about whether the Air Force would be able to meet wartime and peacetime requirements with acceptable trade-offs between operational risk and affordability. The committee recognizes that the Defense Department completed an update of study of strategic lift requirements last year that identified a peak wartime demand for strategic airlift aircraft of 32.7 million ton-miles per day. With the current fleet of C-5 aircraft and when all C-17 aircraft currently on order are delivered, the Air Force would have a wartime capability of roughly 35.8 million ton-miles per day.

The study, however, made no assessment of requirements for peacetime sustainment, nor did it address the operational risk in meeting combatant commander warfighting requirements for tonnage or timeliness.

The committee believes that it needs more information on these and other issues before recommending a change to the current requirements.

The committee intends to seek such information, and, if persuaded that a change is appropriate, will act on this DOD proposal.

The Committee understands, as a result of information provided by the Air Force, that by allowing the Air Force to reduce the fleet to 299 aircraft, the U.S. Government would avoid paying hundreds of millions of dollars more in unprogrammed maintenance costs through fiscal year 2016, including costly investments in avionics upgrades and maintenance for aircraft slated for retirement. The committee agrees that DOD and the American taxpayer should not spend millions of dollars maintaining aircraft that DOD does not need.

### **Guard and Reserve budget requests**

The committee recognizes that in the past, Congress has chosen to increase National Guard and Reserve military construction budgets above the amounts requested by the President. For example, in fiscal years 2008-2010, the last 3 fiscal years funded with congressional additions, the Air Force National Guard and Reserve appropriations more than doubled over the budget request. In fiscal year 2011, Congress added over \$300.0 million to the President's request for all of the reserve components; and in 2010, Congress added approximately \$600.0 million, 60 percent above the President's request.

We are concerned that the Department has, in previous years, under-budgeted National Guard and Reserve military construction accounts. Therefore, the committee directs each of the services to review the future-years defense program for National Guard and Reserve military construction to determine if currently projected funding levels, if enacted into law, will result in infrastructure funding deficiencies for these components.

**\*Indicates that the funding is Authorized and is subject to Appropriations funded within the Fiscal Year 2012 Defense Appropriations Act or the Fiscal Year 2012 Military Construction Appropriations Act**